Burning of the Caroline

SpCl
FC
457
N3U56

LIBRARY
BROCK UNIVERSITY

257932

26th Congress, 2d Session. | Doc. No. 33. | Ho. of Reps. Executive.

BURNING OF THE CAROLINE.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Correspondence in relation to the burning of the steamboat Caroline.

DECEMBER 31, 1840.

Referred to the Committee on Foreign Affairs, and 5,000 extra copies ordered to be printed.

To the House of Representatives of the United States:

I herewith transmit to the House of Representatives a report from the Secretary of State, with accompanying papers, in answer to their resolution of the 21st instant.

M. VAN BUREN.

WASHINGTON, *December* 28, 1840.

DEPARTMENT OF STATE,
Washington, December 28, 1840.

The Secretary of State, to whom has been referred the resolution of the House of Representatives, dated the 21st instant, requesting the President "to communicate to that House (if not, in his opinion, incompatible with the public interest) all the correspondence between this Government and that of Great Britain, or the officers or agents of either, or the officers and agents of this Government with the President or any of its departments, which has not heretofore been communicated to that House, on the subject of the outrage of burning the Caroline on the Niagara frontier; and whether there is any prospect of compensation being made to the owner of said boat for the loss thereof; and, also, whether any communications have been made to this Government in regard to the arrest and imprisonment of —— McLeod, by the authorities of the State of New York, for being concerned in said outrage; and, if so, that he communicate a copy thereof to that House:" has the honor to report to the President, in answer to that resolution, the accompanying papers.

Respectfully submitted:

JOHN FORSYTH.

To the PRESIDENT *of the United States.*

Mr. Stevenson to Mr. Forsyth.

[Extract.]

LEGATION OF THE UNITED STATES,
London, July 2, 1839.

* * * * * * * *

I regret to say that no answer has yet been given to my note in the case of the "Caroline." I have not deemed it proper, under the circumstances, to press the subject, without further instructions from your department. If it is the wish of the Government that I should do so, I pray to be informed of it, and the degree of urgency that I am to adopt.

Mr. Forsyth to Mr. Stevenson.

[Extract.]

DEPARTMENT OF STATE,
Washington, September 11, 1839.

* * * * * * * *

With reference to the closing paragraph of your communication to the department, dated the 2d of July last, (No. 74,) it is proper to inform you that no instructions are at present required for again bringing forward the question of the "Caroline." I have had frequent conversations with Mr. Fox in regard to this subject—one of very recent date; and, from its tone, the President expects the British Government will answer your application in the case, without much further delay.

Mr. Fox to Mr. Forsyth.

WASHINGTON, *December* 13, 1840.

SIR: I am informed by his excellency the Lieutenant Governor of the Province of Upper Canada, that Mr. Alexander McLeod, a British subject, and late deputy sheriff of the Niagara district in Upper Canada, was arrested at Lewiston, in the State of New York, on the 12th of last month, on a pretended charge of murder and arson, as having been engaged in the capture and destruction of the piratical steamboat "Caroline," in the month of December, 1837. After a tedious and vexatious examination, Mr. McLeod was committed for trial, and he is now imprisoned in Lockport jail.

I feel it my duty to call upon the Government of the United States to take prompt and effectual steps for the liberation of Mr. McLeod. It is well known that the destruction of the steamboat "Caroline" was a public act of persons in her Majesty's service, obeying the order of their superior authorities. That act, therefore, according to the usages of nations, can only be the subject of discussion between the two National Governments. It cannot justly be made the ground of legal proceedings in the United States against the individuals concerned, who were bound to obey the authorities appointed by their own Government.

I may add, that I believe it is quite notorious that Mr. McLeod was not one of the party engaged in the destruction of the steamboat "Caroline;" and that the pretended charge upon which he has been imprisoned rests only upon the perjured testimony of certain Canadian outlaws and their abettors, who, unfortunately for the peace of that neighborhood, are still permitted by the authorities of the State of New York to infest the Canadian frontier.

The question, however, of whether Mr. McLeod was or was not concerned in the destruction of the "Caroline," is beside the purpose of the present communication. That act was the public act of persons obeying the constituted authorities of her Majesty's Province. The National Government of the United States thought themselves called upon to remonstrate against it; and a remonstrance, which the President did accordingly address to her Majesty's Government, is still, I believe, a pending subject of diplomatic discussion between her Majesty's Government and the United States legation in London. I feel, therefore, justified in expecting that the President's Government will see the justice and the necessity of causing the present immediate release of Mr. McLeod, as well as of taking such steps as may be requisite for preventing others of her Majesty's subjects from being persecuted or molested in the United States, in a similar manner, for the future.

It appears that Mr. McLeod was arrested on the 12th ultimo; that, after the examination of witnesses, he was finally committed for trial on the 18th, and placed in confinement in the jail of Lockport, awaiting the assizes which will be held there in February next. As the case is naturally occasioning a great degree of excitement and indignation within the British frontier, I earnestly hope that it may be in your power to give me an early and satisfactory answer to the present representation.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

Hon. JOHN FORSYTH, *&c., &c.*

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, December 26, 1840.

SIR: I have the honor to acknowledge, and have laid before the President, your letter of the 13th instant, touching the arrest and imprisonment of Alexander McLeod, a British subject, and late deputy sheriff of the Niagara district, in Upper Canada, on a charge of murder and arson, as having been engaged in the capture and destruction of the steamboat "Caroline," in the month of December, 1837; in respect to which, you state that you feel it your duty to call upon the Government of the United States to take prompt and effectual steps for the liberation of Mr. McLeod, and to prevent others of the subjects of her Majesty, the Queen of Great Britain, from being persecuted or molested in a similar manner, for the future.

This demand, with the grounds upon which it is made, has been duly considered by the President, with a sincere desire to give to it such a reply as will not only manifest a proper regard for the character and rights of the United States, but, at the same time, tend to preserve the amicable relations which, so advantageously for both, subsist between this country and England. Of the reality of this disposition, and of the uniformity with which

it has been evinced in the many delicate and difficult questions which have arisen between the two countries in the last few years, no one can be more convinced than yourself. It is, then, with unfeigned regret that the President finds himself unable to recognise the validity of a demand, a compliance with which you deem so material to the preservation of the good understanding which has been hitherto maintained between the two countries.

The jurisdiction of the several States which constitute the Union is, within its appropriate sphere, perfectly independent of the Federal Government. The offence with which Mr. McLeod is charged was committed within the territory and against the laws and citizens of the State of New York, and is one that comes clearly within the competency of her tribunals. It does not, therefore, present an occasion where, under the constitution and laws of the Union, the interposition called for would be proper, or for which a warrant can be found in the powers with which the Federal Executive is invested. Nor would the circumstances to which you have referred, or the reasons you have urged, justify the exertion of such a power, if it existed. The transaction out of which the question arises, presents the case of a most unjustifiable invasion, in time of peace, of a portion of the territory of the United States, by a band of armed men from the adjacent territory of Canada; the forcible capture by them, within our own waters, and the subsequent destruction, of a steamboat, the property of a citizen of the United States, and the murder of one or more American citizens. If arrested at the time, the offenders might unquestionably have been brought to justice by the judicial authorities of the State within whose acknowledged territory these crimes were committed; and their subsequent voluntary entrance within that territory places them in the same situation. The President is not aware of any principle of international law, or, indeed, of reason or justice, which entitles such offenders to impunity before the legal tribunals, when coming voluntarily within their independent and undoubted jurisdiction, because they acted in obedience to their superior authorities, or because their acts have become the subject of diplomatic discussion between the two Governments. These methods of redress—the legal prosecution of the offenders, and the application to their Government for satisfaction—are independent of each other, and may be separately and simultaneously pursued. The avowal or justification of the outrage by the British authorities might be a ground of complaint with the Government of the United States, distinct from the violation of the territory and laws of the State of New York. The application of the Government of the Union to that of Great Britain, for the redress of an authorized outrage of the peace, dignity, and rights of the United States, cannot deprive the State of New York of her undoubted right of vindicating, through the exercise of her judicial power, the property and lives of her citizens. You have very properly regarded the alleged absence of Mr. McLeod from the scene of the offence at the time when it was committed as not material to the decision of the present question. That is a matter to be decided by legal evidence; and the sincere desire of the President is, that it may be satisfactorily established. If the destruction of the Caroline was a public act of persons in her Majesty's service, obeying the order of their superior authorities, this fact has not been before communicated to the Government of the United States by a person authorized to make the admission; and it will be for the court which has taken cognizance of the offence with which Mr. McLeod is charged, to decide upon its validity, when legally established before it.

The President deems this to be a proper occasion to remind the Government of her Britannic Majesty that the case of the "Caroline" has been long since brought to the attention of her Majesty's principal Secretary of State for Foreign Affairs, who, up to this day, has not communicated its decision thereupon. It is hoped that the Government of her Majesty will perceive the importance of no longer leaving the Government of the United States uninformed of its views and intentions upon a subject which has naturally produced much exasperation, and which has led to such grave consequences.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

JOHN FORSYTH.

H. S. Fox, Esq. *&c.*, *&c.*, *&c.*

26th Congress, 2d Session. | Doc. No. 33. | Ho. of Reps. Executive.

[*To be annexed to Document No.* 33.]

BURNING OF THE STEAMBOAT CAROLINE.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Further correspondence in relation to the destruction of the steamboat Caroline.

JANUARY 4, 1841.

Referred to the Committee on Foreign Affairs.

To the House of Representatives of the United States:

I think proper to communicate to the House of Representatives, in further answer to their resolution of the 21st ultimo, the correspondence which has since occurred between the Secretary of State and the British minister on the same subject.

M. VAN BUREN.

WASHINGTON, *January* 2, 1841.

Mr. Fox to Mr. Forsyth.

WASHINGTON, *December* 29, 1840.

SIR: I have the honor to acknowledge the receipt of your letter of the 26th instant, in which, in reply to a letter which I had addressed to you on the 13th, you acquaint me that the President is not prepared to comply with my demand for the liberation of Mr. Alexander McLeod, of Upper Canada, now imprisoned at Lockport, in the State of New York, on a pretended charge of murder and arson, as having been engaged in the destruction of the piratical steamboat "Caroline," on the 29th of December, 1837.

I learn with deep regret that such is the decision of the President of the United States; for I cannot but foresee the very grave and serious consequences that must ensue, if, besides the injury already inflicted upon Mr. McLeod, of a vexatious and unjust imprisonment, any further harm should be done to him in the progress of this extraordinary proceeding.

I have lost no time in forwarding to her Majesty's Government in England the correspondence that has taken place, and I shall await the further orders of her Majesty's Government with respect to the important question which that correspondence involves.

But I feel it my duty not to close this communication without likewise testifying my vast regret and surprise at the expressions which I find repeated in your letter, with reference to the destruction of the steamboat "Caroline." I had confidently hoped that the first erroneous impression of the character of that event, imposed upon the mind of the United States Government by partial and exaggerated representations, would long since have been effaced by a more strict and accurate examination of the facts. Such an investigation must even yet, I am willing to believe, lead the United States Government to the same conviction with which her Majesty's authorities on the spot were impressed—that the act was one, in the strictest sense, of self-defence, rendered absolutely necessary by the circumstances of the occasion for the safety and protection of her Majesty's subjects, and justified by the same motives and principles which, upon similar and well known occasions, have governed the conduct of illustrious officers of the United States. The steamboat "Caroline" was a hostile vessel, engaged in piratical war against her Majesty's people, hired from her owners for that express purpose, and known to be so beyond the possibility of doubt. The place where the vessel was destroyed was nominally, it is true, within the territory of a friendly Power; but the friendly Power had been deprived, through overbearing piratical violence, of the use of its proper authority over that portion of territory. The authorities of New York had not even been able to prevent the artillery of the State from being carried off publicly at midday, to be used as instruments of war against her Majesty's subjects. It was under such circumstances, which it is to be hoped will never recur, that the vessel was attacked by a party of her Majesty's people, captured, and destroyed. A remonstrance against the act in question has been addressed by the United States to her Majesty's Government in England. I am not authorized to pronounce the decision of her Majesty's Government upon that remonstrance; but I have felt myself bound to record, in the mean time, the above opinion, in order to protest, in the most solemn manner, against the spirited and loyal conduct of a party of her Majesty's officers and people being qualified, through an unfortunate misapprehension as I believe of the facts, with the appellation of outrage or of murder.

I avail myself of this occasion to renew to you the assurance of my distinguished consideration.

H. S. FOX.

The Hon. JOHN FORSYTH, *&c. &c. &c.*

Mr. Forsyth to Mr. Fox.

DEPARTMENT OF STATE,
Washington, December 31, 1840.

SIR: I have the honor to acknowledge the receipt of your note of the 29th instant, in reply to mine of the 26th, on the subject of the arrest and detention of Alexander McLeod, as one of the perpetrators of the outrage committed in New York, when the steamboat "Caroline" was seized and burnt. Full evidence of that outrage has been presented to her Britannic Majesty's Government, with a demand for redress; and, of course, no discussion of the circumstances here can be either useful or proper, nor can I suppose it to be your desire to invite it. I take leave of the subject with

this single remark, that the opinion so strongly expressed by you on the facts and principles involved in the demand for reparation on her Majesty's Government by the United States, would hardly have been hazarded had you been possessed of the carefully collected testimony which has been presented to your Government in support of that demand.

I avail myself of the occasion to renew to you the assurance of my distinguished consideration.

JOHN FORSYTH.

SPCL FC 457 N3 U56
C. 1
3 9157 00168101 7

Spcl
FC
457
N3
U56

BROCK UNIVERSITY
ST. CATHARINES, ONTARIO

LIBRARY

FOR USE IN SPECIAL COLLECTIONS ONLY